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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/504,327	02/14/2000	Dr. Steven Ericsson Zenith	KPI 2	7756

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BAYERL, RAYMOND J

ART UNIT	PAPER NUMBER
2173	

DATE MAILED: 09/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/504,327	Zenith
Examiner R Bayer	Group Art Unit 2173

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on _____.
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- Claim(s) 1 - 17 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1 - 17 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on 14 Feb 2000 is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- Interview Summary, PTO-413
- Notice of References Cited, PTO-892
- Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Other _____

Office Action Summary

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1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

At page 1, line 1, applicant's reference to a "related application" contains the uncertain "U.S. Serial No. (unassigned)".

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following figures (and their reference numerals), not mentioned in the description: figs 5, 7 - 11, 15. Also, at page 17, the discussion of reference numerals 701, 702 does not appear to correspond to the items so labeled in the figures.

A proposed drawing correction, corrected drawings, or amendment to the specification to add the correct figure numbers and reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application.

The objection to the drawings will not be held in abeyance.

3. The use of the trademark "Web TV" has been noted in this application (at pages 2, 4, 6, 26, and also in claims 1 - 15). It should be capitalized wherever it appears and be accompanied by the generic terminology. The examiner notes the

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occurrence of "web TV" at some points, when this is in fact a trademark of Microsoft Corporation.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. Claims 1 - 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As noted above, applicant makes use of the trademark "Web TV" in claims 1 - 15. However, this does not provide a clear recitation of the intended limitation of the claim. The WEB TV system, for example, could (and indeed, likely will) undergo changes in the forthcoming years, such that the meaning of the claim will not remain consistent.

Also in independent claims 1, 6, the phrase "or the like" at the last line does not clearly set forth just how similar the intended additional devices might be. A similar problem exists with "such as" (claim 6, line 8).

Finally, at claims 9, 12 - 13, applicant claims an invention in which "user privacy" or "anonymity" "is protected"

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and a system that is "non-privacy invasive". However, it is unclear how a market-data collection system that considers individual user interactions with the programming categories can have such a property. While the user may not as readily suspect that privacy is being invaded, the fact remains that it is, internal to the system.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. ("Herz"; US #6,088,722) in view of Bingham et al. ("Bingham"; US #5,799,298).

As in claim 1's provision of "affinity based categorization of internet or television content", Herz similarly provides for the receipt of desired movies and other forms of data from a network (Abstract), according to characteristics in use for characterizing video programming, these to include film genres such as westerns, comedies, dramas, foreign language, etc. as defined by the American Film Institute (col 11, line 41 - col

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12, line 6), so that the characteristics of content predict the attractiveness of each video program, movie, or other data to each prospective customer. Thus, Herz, working with "a universe of content", has the end result of returning desired content, and a "virtual" channel is created to receive the program selected to match that customer's interests (col 48, lines 18 - 34).

While the dialog conducted with the Herz customer will discover characteristics relating to a profile, initially obtained according to several ways, such as by zip code or other characteristic demographic information or by monitoring what customers watch (col 12, lines 7 - 58), Herz does not **explicitly** show a "character emblematic of a specific category", "wherein each character is associated with and mediates a subset of the universe of content". However, the selection of a graphical "affinity group character" occurs in the system for establishing pattern matching and differentiation disclosed in Bingham. In particular, the user is given a choice of one of the characters such as shown in fig 3, these having differing profile definitions (col 4, lines 13 - 52), with the computer user determining and indicating who are they most like (col 3, lines 9 - 40).

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Therefore, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to represent choices in profile definition, useful to Herz's customization, in the form of pre-defined characters as per Bingham because this creates a more intuitive interface for the specification of that content the user is ultimately interested in viewing.

As per claim 2's "content" that "is filtered", please note that both Herz and Bingham are concerned with producing a filtered subset of the original content collection available. This "defines broadcast media and Internet content which is available for viewing" (claim 3) and in Herz, such "broadcast programming" is subject to "targeting" "to a desired audience" (claim 4; see also claim 14). In particular, Herz discusses application to home shopping selections, infomercials and the like (col 4, lines 39 - 65), as in claim 5.

Independent claim 6 is similar in many ways to independent claim 1 and therefore rejected for many reasons similar to those given above. Also in claim 6 is a "feedback means...for storing character / user interaction information", this being used "for determining allocation of advertising". However, at least in Herz, feedback is obtained for updating the customer profiles in accordance with the video programming

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actually watched by the customer (col 6, line 43 - col 7, line 4), so that the ongoing use of the prior art selection mechanism also provides "feedback" to adapt the interface. As further suggested by Herz, "advertising" then becomes customized. See also claims 10, 11, 17.

As for claim 7's "interaction information", which "includes" "times each affinity group character is selected, time viewers spend interacting with each character, number of users selecting each character", these are all features of the frequency with which the characters are selected in Bingham. Herz, also, acquires profile information to such an extent by noting the video programming actually watched. Thus, both the original and ongoing communications and choices of the user in each system are used to determine the content presented. Claim 8's "character's history of interactions with a user" reads upon Herz in view of Bingham for similar reasons. The Bingham user can establish "a virtual relationship" with the "affinity character" he or she is most like.

As per claims 9, 12, 13, to the extent that "privacy" is "protected" and not invaded by the claimed invention, a similar point can be made concerning both Bingham, with the metaphoric characters, and Herz, with the user dialogue and programming analysis, that shield some of the information-

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gathering of the invention from the end user and thus create an appearance, at least, of "privacy".

As per claim 15, any system using the type of server found at the information head-ends of Bingham or Herz will have "means for selecting and storing broadcast content for later playback".

Independent claim 16 is similar to independent claim 1 and is rejected for reasons similar to those given above. Also, in Herz in view of Bingham, the use of the characters shown in Bingham "relates to and further amplifies the broadcast and media content" presented in conjunction with the "selected character". Anything made user-specific is essentially "amplified" to that user.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The remaining US Patent documents made of record (see attached form PTO-892) generally relate to applicant's topic of selective access of media or information content. The particularly relevant disclosures of Khoo et al. (US #6,434,747 B1, 19 January 2000) and Kayahara (US #6,405,206 B1, 30 November 1998) are cited for their potential applicability to those parts of the claimed invention in this CIP whose invention date does

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not extend to the parent applications (i.e., if the date of invention is taken to be 14 February 2000).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (703) 305-9789. The examiner can normally be reached on M - F from 8:30 AM to 4:00 PM.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (703) 308-3116. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239 for Official submissions, (703) 746-7238 for filings after final rejection and (703) 746-7240 for non-official communications.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173
5 September 2002